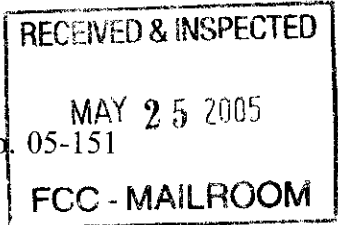


BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

ORIGINAL

In re Amendment of Section 73.202(b))
of the Commission's Rules, Table of Allotments,)
FM Broadcast Stations)
(LLANO AND JUNCTION, TEXAS))

MM Docket No. 05-151
RM-11222



To: The Office of the Secretary,
for the Attention of the Assistant Chief, Audio Division, Media **ORIGINAL**
DOCKET FILE COPY

REPLY COMMENTS

Munbilla Broadcasting Properties, Ltd. (*MPBL*), by its communications counsel, hereby
files its Reply Comments in this proceeding.

I. BACKGROUND

A. THE PETITION AND THE NPRM

1. On February 2, 2005, Linda Crawford filed a Petition for Rule Making asking the Commission to allot Channel 297A to Llano, Texas as a fourth local commercial FM service. Among other things, the Petition noted that the Commission had dismissed a previous Counterproposal (in MM Docket 00-148) proposal involving Channel 297A at Llano and that, although that dismissal was not final, the dismissal was effective. Ms. Crawford also noted the Commission had, in MM Docket No. 01-154, rejected a Petition for Rule Making (filed by Charles Crawford) to allot Channel 297A to Goldthwaite, Texas, because it was an untimely Counterproposal to the dismissed Counterproposal in MM Docket No. 00-148. (Again, although the dismissal of Mr. Crawford's Goldthwaite Petition was not final, it was effective.)

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2. Ms. Crawford's Petition prompted the Media Bureau to issue the Notice of Proposed Rule Making in the instant proceeding, 20 FCC Rcd 6318, 70 Fed. Reg. 19402 (2005) (the NPRM). The NPRM proposed to allot Channel 297A to Llano, Texas as a fourth local commercial FM service. The NPRM noted that the proposed Llano channel conflicted with (Charles Crawford's) dismissed proposal for Channel 297A at Goldthwaite, Texas in MM Docket No. 01-154, and that Mr. Crawford's Application for Review of the dismissal remains pending. Therefore, the NPRM, citing Auburn, Alabama, et al., 18 FCC Rcd 10333 (MB 2003), cautioned interested parties that the proposed Llano allotment could only be granted subject to the outcome of MM Docket No. 01-154. The NPRM also solicited Counterproposals, to be filed by May 12, 2005. On May 3, 2005, Ms. Crawford filed Comments reiterating her intent to apply for a construction permit for Channel 297A at Llano, if allotted. Ms. Crawford further stated her intent, should she be authorized to do so, to construct the authorized facilities.

B. MBPL's COUNTERPROPOSAL

3. On May 11, 2005, MBPL filed a Counterproposal requesting the allotment of Channel 297A to the community of Goldthwaite, Texas as a first local service. MBPL's Counterproposal noted that MBPL's Goldthwaite Counterproposal, like Ms. Crawford's proposed Llano allotment, would be short-spaced to the proposed substitute Channel 297A at Llano, originally part of a Counterproposal in MM Docket 00-148. Notwithstanding, MBPL noted that its Counterproposal was equally acceptable for rule making, pursuant to Auburn, Alabama et al., supra. And MBPL further noted that, on § 307(b) grounds, its Counterproposal must prevail over the proposed Llano allotment. MBPL stated its intent to apply for a

construction permit for Channel 297A at Goldthwaite, if allotted. MBPL further stated its intent, should MBPL be awarded the construction permit, to build the authorized facilities, to place the constructed facilities into broadcast service, and to seek a license to cover.

C. CC/R COMMENTS

4. On May 12, a group of entities —Rawhide Radio, LLC, Clear Channel Broadcasting Licenses, Inc., CCB Texas Licenses, L.P., and Capstar TX Limited Partnership (collectively, *CC/R*) — filed Comments in this proceeding. *CC/R* noted that it had filed a multielement Counterproposal in MB Docket No. 05-112 (Fredericksburg, Texas). *CC/R*'s Comments stated that the proposed Llano allotment was short-spaced to a multielement Counterproposal that *CC/R* had filed in MM Docket No. 00-148, and that the outcome of this (Llano) proceeding should be conditioned on the outcome in MM Docket No. 00-148. *CC/R* further noted that, on May 9, 2005, it had filed a Counterproposal in MB Docket No. 05-112 (Fredericksburg, Texas) that,"... was identical to the portion of *CC/R*'s original [Counter-] proposal in [MM Docket No. 00-148 (Quanah, Texas)] that remains before the Commission on Application for Review."

5. In Quanah, the staff had rejected *CC/R*'s Counterproposal as fatally flawed, and had denied reconsideration of that rejection. See, Quanah Texas, 18 FCC Rcd 9495 (2003), recons. den., 19 FCC Rcd 7159 (2004). *CC/R* requested that its Counterproposal be considered in MB Docket No. 05-112, "... if it were dismissed on procedural grounds in Quanah; alternatively, the Commission could choose to grant the counterproposal in Fredericksburg and render [*CC/R*'s] Quanah Application for Review moot."

6. In its Comments filed in this (Llano) proceeding, CC/R also stated that the proposed Llano allotment also conflicted with a “Counterproposal” that CC/R has tendered in the Fredericksburg proceeding. Based on the latter conflict, CC/R asserted that:

The filing of [CC/R’s] Fredericksburg counterproposal now means that the Commission should consolidate this proceeding with the Fredericksburg proceeding. The two proceedings have become interrelated through the filing of [CC/R’s] counterproposal in Fredericksburg. See Perry, Florida et al., 4 FCC Red 5599 (1989), recon. granted in part, 7 FCC Rcd 2557 (1992). This is because action cannot be taken on the Llano allotment in this proceeding until the outcome of the Fredericksburg proceeding is known. Specifically, if the Commission grants the Joint Parties’ counterproposal, the petitioner’s request for a new allotment at Llano on Channel 297A cannot be accommodated. Moreover, the Fredericksburg counterproposal is timely to this proceeding, having been filed on May 9, 2005, three days before the comment date in this proceeding.

WHEREFORE, for the foregoing reasons, the Commission should consolidate this proceeding with MB Docket No. 05-112 (Fredericksburg, Texas) and take action on the combined proceedings.

II. ARGUMENT

7. MBPL addressed the merits of CC/R’s Counterproposal in MB Docket No. 05-112 — or more precisely, the utter lack thereof — in Reply Comments that MBPL filed in the Fredericksburg docket yesterday. In brief and to the point, MBPL’s Reply Comments showed that CC/R’s Counterproposal, utterly fails to protect a Construction Permit that the Commission had duly granted to MBPL almost a year ago. The grant of the Construction Permit (BPH-20030902ADU) became final at the close of Commission business on August 10, 2004, nine months before the day on which CC/R filed its Counterproposal (the Fredericksburg docket’s deadline for Counterproposals). The CP’s Special Operating Condition No. 7 reads as follows:

The grant of this permit is conditioned on the final outcome of MM Docket 00-148. The final outcome of that proceeding may require KHLB to change frequency, class, or site location. Accordingly, any construction undertaken

pursuant to this permit is at the permittee's sole risk. See Meridian Communications, 2 FCC Rcd 5904 (Rev. Bd. 1987).

8. MBPL accepted the CP with that condition. MBPL was (and remains) willing to bear the risk that the ultimate outcome of MM Docket No. 00-148 may require the dismantlement of the facility. Accordingly, MBPL constructed the authorized facility, and filed an application for a license to cover the Construction Permit. See FCC Form 302-FM, File No. BLH-20050307ABE. By Public Notice of March 10, 2005, the Commission announced that it had accepted the license application for filing. See Broadcast Applications, Report No. 25938.

9. Even though the vitality of the CP is conditioned on the outcome of MM Docket 00-148, its vitality *is not and cannot be* conditioned on the outcome in Docket 05-112. The grant of the CP vested a statutory right of protection from subsequent conflicting proposals, pursuant to Section 316 of the Communications Act, 47 U.S.C. § 316, and MBPL insists on the full honoring of that statutory right.

10. CC/R claims that the filing of its Counterproposal requires the consolidation of this Llano docket with the Fredericksburg proceeding, because CC/R's Counterproposal conflicts both with the (Llano) NPRM and with the Fredericksburg NPRM. That claim might have some justification if CC/R had filed a valid Counterproposal in the Fredericksburg rule making. However, CC/R's Counterproposal was Dead On Arrival and cannot be accepted for rule making in either the Fredericksburg proceeding or this (Llano) docket.

11. As the Audio Division has noted,

"It is well established that counterproposals must be technically correct and substantially complete when filed and that counterproposals will be considered only if they are filed by the deadline date for comments. See Section 1.420 (d) of the Commission's Rules,

Broken Arrow and Bixby, Oklahoma, 3 FCC Rcd 6507, 6511 (1988) and Springdale Arkansas et al., 4 FCC Rcd 674 (1989), recon., 5 FCC Rcd 1241 (1990).”

Parker, Arizona, 17 FCC Rcd 9578 (M. Bur. 2002). Id. “[C]lear consent” from MBPL either to a cancellation or suitable modification of Construction Permit BPH-20030902ADU had to be provided by CC/R by the Fredericksburg Comment deadline . Because CC/R provided no such consent from MBPL, CC/R’s Counterproposal was neither technically correct nor substantially complete. See, Llano and Marble Falls, Texas, 12 FCC Rcd 6809, 6810 note 3 (1997); Claremore, Oklahoma et al., 3 FCC Rcd 4037 (1988). CC/R’s failure to provide MBPL’s consent rendered CC/R’s Counterproposal completely, “... unacceptable for consideration.” Parker, Arizona, supra.

12. Because CC/R’s Counterproposal was neither technically correct nor substantially complete when filed on the deadline for Comments in the Fredericksburg proceeding, it would be ***wholly inappropriate*** for the staff to consolidate the two proceedings. Rather, the staff must summarily reject CC/R’s Counterproposal on delegated authority, and must continue to process the two dockets as separate, unrelated proceedings.¹

13. The staff has before it in this Llano docket two proposals that are acceptable for rule making:

¹MBPL’s Reply Comments in the Fredericksburg proceeding also showed another defect in CC/R’s Counterproposal: its duplicative nature relative to the rejected proposal in MM Docket No. 00-148. For reasons identical to those which led the Commission to adopt the multiple-application rule, 47 C.F.R. § 73.3520(b), the Commission must reject CC/R’s Counterproposal in the Fredericksburg proceeding. Putting aside, for just a moment, the issue of fatally inadequate protection to station KHLB’s authroized facilities, such a “do-over” filing is not permissible due to CC/R’s pointed refusal to pull the plug on its Application for Review of both the rejection of its original Counterproposal in MM Docket No. 00-148 and the denial of reconsideration of that rejection.

- the original proposal of Linda Crawford to allot Channel 297A to Llano, Texas as an additional local service; and
- MBPL's Counterproposal to instead allot the channel to Goldthwaite, Texas, as a first local service.

MBPL's Goldthwaite Counterproposal demonstrated that the Goldthwaite Counterproposal must prevail over Ms. Crawford's Petition to allot yet another channel to Llano. Revision of FM Assignment Policies and Procedures, 90 FCC 2d 88 (1982). If the staff deems it both necessary and appropriate to condition the Goldthwaite allotment upon the outcome in MM Docket No. 00-148, MBPL does not intend to object to such conditioning. And as MBPL pointed out in its Counterproposal, adoption of MBPL's Counterproposal will eliminate the need for the pending Application for Review in MM Docket 01-154.

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III. CONCLUSION

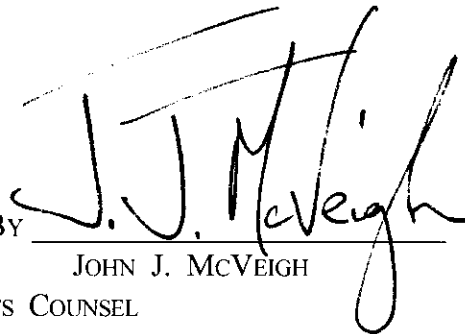
14. For all of the above reasons, the staff should promptly issue a Report and Order in this (Llano) proceeding:

- implementing MBPL's Goldthwaite Counterproposal and allotting Channel 297A to the community of Goldthwaite, Texas;
- rejecting Ms. Crawford's Llano Petition;
- rejecting CC/R's request that this Docket be consolidated with the Fredericksburg proceeding (MB Docket No. 05-112); and
- terminating this (Llano) proceeding.

Respectfully submitted,

MUNBILLA BROADCASTING PROPERTIES, LTD.

BY

A handwritten signature in black ink, appearing to read "J. J. McVeigh", written over a horizontal line.

JOHN J. McVEIGH

ITS COUNSEL

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DATE: MAY 25, 2005

CERTIFICATE OF SERVICE

I hereby certify that I have, this Twenty-Fifth day of May, 2005, sent copies of the foregoing **REPLY COMMENTS** by first-class United States mail, postage prepaid, to:

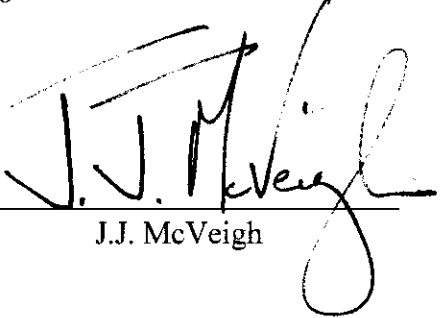
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